IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2488 OF 2005

Swift Finlease (India) Ltd. ...Petitioner.
Vs.
Union of India & Ors. ...Respondents.

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Mr. Sanjay Jain with Mr. Lalit Jain for the Petitioner.
Mr. H.P. Narsana i/b. Harshad & Co. for Respondent No.2.
Ms.Renuka Nair for Respondent No.3.
Mr. P. G. Kinikar for Respondent No.4.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 19, 2005.

P.C.:

Upon a measure that has been adopted by the First Respondent under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the Securitisation Act"), the Petitioner filed an appeal under Section 17(1) before the Debts Recovery Tribunal. The Debts Recovery Tribunal dismissed the appeal by an order dated 1st April 2005. A person aggrieved by an order passed by the Debts Recovery Tribunal under Section 17, has recourse to an appellate remedy before the Appellate Tribunal under Section 18

(1). This petition under Article 226 of the Constitution has been instituted in order to challenge the constitutional validity of the second and third proviso to Section 18(1) as amended. Section 18 (1) as it now stands after amendment reads as under :

> "18. Appeal to Appellate Tribunal.- (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17 may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:
>
> Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:
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> Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
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> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso."

2. In **Mardia Chemicals Ltd. vs. Union of India**, AIR 2004 SC 2371, there was a challenge, inter alia, to the constitutional validity of the provisions of Section 17(2) in so far as they provided that an appeal by the borrower before the Debts Recovery Tribunal shall not be entertained unless a borrower has deposited 75% of the amount claimed in a notice under Section 13(2) of the Securitisation Act. The proviso to sub-section (2) of Section 17, however, enabled the Debts Recovery Tribunal for reasons to be recorded in writing to waive or reduce the amount required to be deposited under the Section. The Supreme Court held that the condition of pre-deposit was illusory on the ground that (i) It was imposed while approaching the adjudicating authority of the first instance, not in appeal; (ii) There was no determination of the amount due as yet; (iii) The secured assets or the management thereof has been taken over by the secured creditor; (iv) There was no special reason for imposing a requirement of double security in respect of an amount yet to be determined and settled; (v) 75% is not a meager amount; (vi) This would leave the borrower in a position where it would not be possible for him to make deposit

of 75% of the undetermined demand. Such conditions were held to be onerous, oppressive and arbitrary and violative of Article 14 of the Constitution.

3. The submission which is urged before us is that the same vice which was found to exist in the provisions of Section 17 (2), now exists in the amended provisions of Section 18(1). We do not find any merit in that submission. The provisions of Section 18, it may be noted, govern the right of an appeal to the Appellate Tribunal. The remedy under Section 18 is not invoked in the first instance, after the adoption of measures under Section 13(4) – as is the case when the remedy under Section 17 is invoked. The remedy under Section 18 is an appellate remedy which arises after the Debts Recovery Tribunal has in the first instance adjudicated upon the validity of the grievance that is raised by the borrower against the adoption of measures under Section 13(4). The requirement of pre-deposit in Section 18 is a pre-deposit that governs during the pendency of the appeal. The statute has provided that 50% of the amount of the debt due as claimed by the

secured creditor or as determined by the Debts Recovery Tribunal whichever is less has to be deposited. The Appellate Tribunal is empowered for reasons to be recorded in writing to reduce the amount to a figure not below 25% of the debt as referred to in the second proviso. The amount which is required to be deposited cannot be regarded as oppressive or arbitrary, particularly in view of the circumstance that in the case of an appeal under Section 18, the Debts Recovery Tribunal has in the first instance dealt with the merits of the challenge preferred by the borrower against the measures adopted under Section 13(4). The statute requires that there be a minimum deposit of 25%, but this in our view, cannot be regarded as oppressive or arbitrary. In the original provision of Section 17, the statutory condition was for a deposit of 75% and that too before the Tribunal of first instance under Section 17. Upon a cumulative evaluation of all the circumstances which were set out in paragraph 64 of its judgment, the Supreme Court held that the requirement of pre-deposit in Section 17 was oppressive and arbitrary so as to violative of Article 14. The provision of pre-deposit in appeal stands on a different footing, a distinction which

appears from the judgment of the Supreme Court itself. The quantum of deposit is in our view, also not arbitrary or oppressive.

4. For all these reasons, we do not find any merit in the challenge to the constitutional validity of the second and third proviso to sub-section 1 of Section 18 of the Securitisation Act. Since the Petitioner has an alternate remedy before the Debts Recovery Appellate Tribunal, we decline to go into the merits of the order passed by the Debts Recovery Tribunal, leaving it open to the Petitioner to espouse the alternate remedy in appeal. The Petition is dismissed with these observations. There shall be no order as to costs.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.